1.   **VIA ECF**

> Hon. Gabriel W. Gorenstein
> United States District Court
> Southern District of New York
> 500 Pearl Street
> New York, NY 10007

2.   **Re: Cohen v. Action Squared et al., No. 23-CV-10359 (JPC) (GWG)**

I LETTER–MOTION REQUESTING PRE–MOTION CONFERENCE

3.   Plaintiff writes in accordance with Your Honor's Individual Rules of Practice seeking a pre-motion conference for a motion for leave to amend. Plaintiff has attached his proposed Second Amended Complaint (aka 2AC) and a version showing changes from the first amended complaint.

4.   Plaintiff requests leave to amend his complaint to add claims:

a.   Violation of Section 1 of 15 U.S.C. Sherman Antitrust Act. In the market for Digital Political Microtargeting Platforms, Defendants Action Network, AFL-CIO, Civitech, Nathan Woodhull, MoveOn.org, Democratic National Committee, Netroots Nation engaged in racketeering conspiracies to gain control of, operate, and destroy a OSDI, a technology which served as an external network effect, then invest the essential intellectual property including copyright authorship and OSDI's application ecosystem into their own enterprises.

5.   Defendants unreasonably restrained trade in the following ways:

-   Gave themselves an unfair competitive advantage and created barriers to entry for competitors, increased customer switching costs and reseller support costs, and reduced customer choice by misappropriating OSDI's essential IP and application ecosystem, and laundered it into proprietary application ecosystems in a manner similar to App Stores.

-   Increased customer switching costs.

-   Increased application developer costs.

-   Created an artificial inefficiency in the market which favors large, well-resourced players who can afford duplicative work.

-   Leveraged the artificial inefficiency to launder an external network effect into proprietary internal network effects to create a market for "universal adapters". An analogy would if Defendants coerced the laptop or smartphone market away from USB-C and back to proprietary connectors.

- Since the relevant markets constitute essential resources for candidates running for election, Defendants and their co-conspirators have gained gatekeeper powers over those resources including products and the data pipes that data flows through, allowing them to discriminate to deprive or degrade those for disfavored candidates.

6.   2AC elaborates on these points in section *Violations / Unfair Competition / Anticompetitive Effects*

7.   Defendants also used their racketeering schemes to use OSDI and its external network effect to lift themselves up in the market while locking out a competitor, PDI.

I.A   The Campaign's Actions Harm Competition

8.   Defendants and their co-conspirators are referred to as the Campaign.

9.   Through its racketeering activity, the campaign misappropriated the essential IP from the Open Supporter Data Interface aka (OSDI) project, including copyright authorship and the application ecosystem. The OSDI project functioned as a Standards Development Organization. (SDO)

10.   The platform market is concentrated, historically dominated by a single player, NGPVAN.

11.   An effect of the Campaign's racketeering activity is that their Digital Microtargeting Platform products benefited by getting a "head start" on their proprietary API and application ecosystems.

12.   The Campaign's racketeering activity and extortion also destroyed the project as well as damaged Plaintiff's reputation and economic viability using deception, and lock out competitor PDI. PDI, previously serving California, launched it's national platform Blue-Vote at Netroots Nation 2017 to expand to a national customer base. PDI's current website no longer lists BlueVote and states that its platform product is California only.

13.   This allowed the Campaign to deprive other market players of the same benefits, thus giving them an unfair competitive advantage.

14.   The destruction of OSDI and its external network effect creates an artificial inefficiency requiring applications and platforms to spend resources to build individual proprietary connectors. An analogy would be if USBC was destroyed in the smartphone market, requiring mobile phones and accessory makers to revert back to proprietary connectors.

15.   Customers in these markets are revenue constrained, being campaigns which are limited by campaign finance laws or non-profits, so the effect of the artificial inefficiency is amplified.

16.   The Campaign used an SDO (OSDI) as an "elevator" to lift themselves up in the market, then destroyed it. This prevents other market players from gaining the same benefit.

I.B   Plaintiff's Antitrust Injury

17.   The campaign could not have achieved the outcome that they did, and their ill-gotten gains without destroying OSDI's external network effect and misappropriating essential IP and laundering it into external network effects as proprietary APIs and ecosystems.

18.   The essential IP in what Action Squared and Civitech use as their proprietary API, is the OSDI IP, which is predominantly Plaintiff's.

19.   In order to prevent PDI from competing at the level of the market, Defendants needed to destroy OSDI, its external network effect, and Plaintiff's reputation and economic viability to prevent the external network effect from returning.

20.   Defendants fraudulently induced Plaintiff's labor from the outset of the project.

I.C   Overview Timeline of Defendant's Conduct

- On 12/11/2013, Via email to Plaintiff [D1991], Woodhull shares his plan to seek funding from VC New Media Ventures to build a "universal adapter." With an external network effect, universal adapters would not be viable business. A similar dynamic exists in the laptop and smartphone market which is converging on USBC, which makes universal adapters unnecessary and non-viable as a venture capital investment. From this point, Plaintiff is an obstacle to the interests of venture capitalists.

- On 8/20/2014 Jason Rosenbaum states his goal of being "one of two widely used progressive APIs", which implicitly means one of two dominant platforms.

21.   Woodhull and Action Network, along with partners AFL-CIO, Netroots Nation and DNC had strategies to profit which depended on OSDI and its external network effect's failure.

22.   Defendant's early racketeering scheme to facilitate the above 2 goals failed in 2014. The racketeering conspiracy grew while covertly attempting a series of schemes to undermine the OSDI project and misappropriate its IP, while using Plaintiff and OSDI as a shield to protect their platform disintermediation play.

23.   Defendant's racketeering schemes included Wire Fraud, parallel conduct combining a self-preferencing technical architecture, AFL-CIO's monopsony power, and Fear Uncertainty Doubt (FUD), Robbery by Extortion and Abuse of Process. The chart below illustrates the sequence.
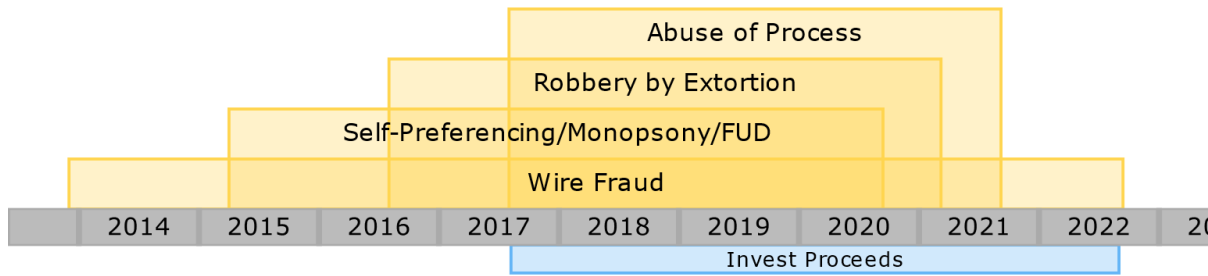
Predicates

- On 9/9/2015 Via email from Shai Sachs, NGPVAN released their OSDI platform implementation. [D312]

- With a 2X ROI, OSDI had a critical mass of adoption that became self-perpetuating. Plaintiff was aware of the following implementations prior to misappropriation. NGPVAN, Action Network, CallHub, Accurate Append, Mobile Commons, Act Blue, New/Mode, CiviCRM, New/Mode, Mobilize, MoveOn Spoke, MoveOn Internal Tools, ProgCode Resistance Calendar, ProgCode National Voter File, ProgCode Maps for Change, RiseUp.

- On 10/12/2016 Via OSDI Blog post, Jason Rosenbaum/Action Network describes how Action Network and AFL-CIO use OSDI to integrate with NGPVAN, "''OSDI s interoperable API specification really saved us time and money, cutting expected development time for VAN events integration from two weeks down to one, Rosenbaum said. Being able to get features like this into the hands of our partners more quickly is a big win for us and for them." [D390]

- On 7/7/2017 Via email, Plaintiff is introduced to Dimitri Mehlhorn by Brady Kriss a leader at Rag-Tag, which evolved out of the volunteer coder network for Hillary for America and the DNC. [D672]

- On 7/13/2017 Via email, PDI announced its new national platform at Netroots Nation 2017, "The event, celebrating the launch of PDI's National Software Platform, is open to all Netroots Nation badge holders and will be held." [D385] The platform would be named "BlueVote"

- On 7/24/2017 Via email, Rapi Castillo a leader of the Progressive Coders Network, which evolved out of the volunteer coder network for the Bernie Sanders campaign, introduced Plaintiff to Raffi Krikorian, the DNC's new CTO, stating "Raffi, would like to introduce Josh Cohen, Chairman of OSDI, an amazing data interface that is now being used by Action Network, MoveOn, and a lot of grassroots progressive applications." [D28] Plaintiff and Raffi met and discussed making OSDI compliance a preferred criteria for inclusion in its upcoming marketplace. Raffi asked Plaintiff to draw up a proposal.

- On 8/2/2017, Higher Ground Labs announced "$1.5M initial investment in our inaugural" [D1637]

24.   The 2016 origin of Cohen v. Swirling was Nathan Woodhull and Action Network's founder and Director of Technology, Brian Young and Jason Rosenbaum respectively, using their former employee Swirling as a proxy to terrorize Plaintiff by portraying him as

an example of sexual harassment and violence towards women, in an attempt to co-erce Plaintiff to abandon his property rights.

25.   After Netroots Nation 2017, with the help of VC Higher Ground Labs, founded in early 2017, Defendants' provoked false-flag Cohen v. Swirling, then paralyzed the DNC and PDI conversations.

   •   On 1/25/2018, Plaintiff received notification that Swirling was served on 1/23/2018. [D67]

   •   On 2/1/2018, the OSDI Governance Committee voted to approve the DNC proposal including marketplace criteria and sent it to Raffi Krikorian. [D517]

   •   On the same day, Joe McLaughlin emailed the OSDI Governance Committee indicating that PDI was ready to join OSDI. [D417]

   •   On 2/12/2018, Swirling's Twitter account was used to post a tweetstorm of amplifying the campaign's deception.

26.   The following diagram shows Defendants' Abuse of Process to gain control of OSDI.

Paralysis
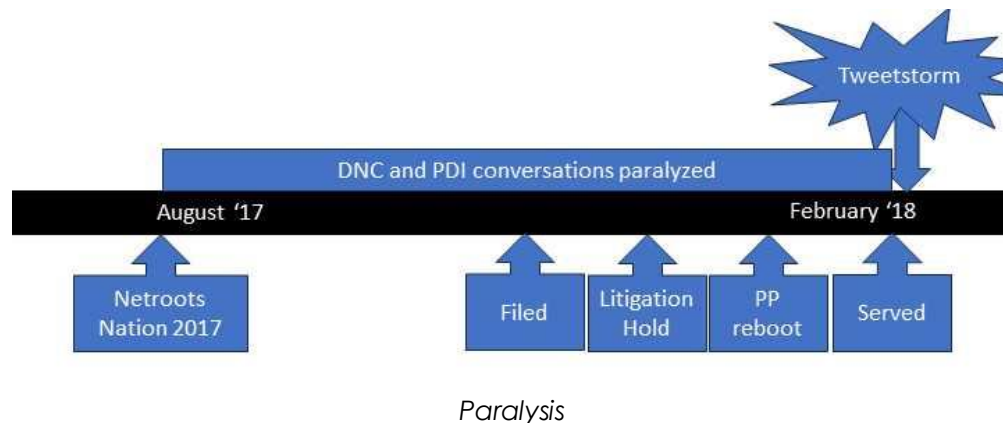
27.   During Cohen v. Swirling, Swirling and Defense counsel Schary were serving the interests of venture capitalists Higher Ground labs and Acronym, Action Network (Swirling's former employer) and Defendants' racketeering and extortion.

28.   After the Order of Discontinuance for Cohen v. Swirling, on 5/30/2018 via telephone, Jason Rosenbaum continue his attempts to coerce Plaintiff to abandon the project.

29.   🔊 Audio 🕐 05/30/18 🕐 2018-05-30 11:11pm "Telephone Call Jason Rosenbaum, Josh Cohen" [T23] 🎤 My Recording; 👤 Jason; 👤 Josh

30.   The escalation of their deception was to falsely claim that Plaintiff had been harassing Swirling for a year and a half. Jason Rosenbaum concedes that was false.

31.   🔊 👤 Josh 🕐 +11:00 [T23]

   To the extent I am guilty of anything it is unruly and disobedient behavior on a group in September 2016, and mostly silent protest for about a minute in a conference session (November 2016)... just two things completely within the norms of the community.

32.   🔊 👤 Jason 🕐 +11:00 [T23]

   I agree... It's not about the merits.

33. 🔊 👤 Josh ⏱ +11:00 [T23]

    Harassing her over a period of time, No.

34. 🔊 👤 Jason ⏱ +11:00 [T23]

    Again, it's not about the merits. I agree... I agree... It's not about the merits.

35. 🔊 👤 Josh ⏱ +11:00 [T23]

    Yeah, it is about the merits

36. Jason then uses the unjust harm to attempt to coerce Plaintiff to resign.

37. 🔊 👤 Jason ⏱ +17:06 [T23]

    I would hope that at this point when you've seen what happened to the organization you clearly care about, you would put it first and take that step back.

38. 🔊 👤 Jason ⏱ +41:51 [T23]

    Going forward, you have a reputation in the community and you are unable to do the work of chairman...

39. Plaintiff refused to be coerced.

40. Defendants then falsely claimed that Judge Gabriel W. Gorenstein issued a restraining order against Plaintiff to coerce the leaders of Personal Democracy Forum conference in June 2018 to exclude Plaintiff, ensuring he could not discover their schemes.

41. Defendants used the conflict they provoked using Swirling as a proxy and the occurrence of the false flag Cohen v. Swirling as a pretext to exclude Plaintiff from industry conferences like Netroots Nation and google groups and other digital spaces where he might have discovered their schemes.

42. The following diagram shows the sequence of Defendant's racketeering conspiracies to gain control of OSDI, operate it, and invest the proceeds of racketeering into their enterprises.
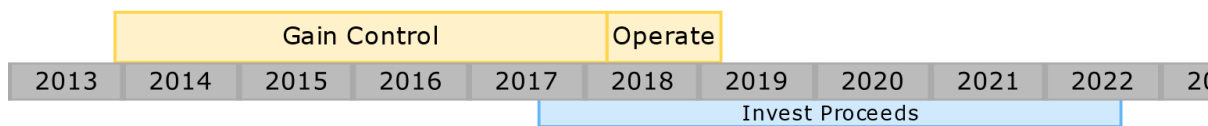
Defendants Racketeering Activity

43. On the front stage, visible to the community and spaces Plaintiff was excluded from, Defendants used a campaign where Action Network, MoveOn and The Movement Cooperative used messages like "TECH FOR THE MOVEMENT, NOT THE BILLIONAIRES", for example in a session at Netroots Nation 2019. [D493] On the front stage, they portrayed themselves as fighting against "the incentives of investor-driven, for profit technology are exactly counter to the long-term interests of our movement". The campaign's answer is "Cooperative Development", which is the origin story for Action Squared and its

ecosystem.

44.   On the back stage they were conspiring with the venture capitalists in their racketeering to misappropriate OSDI and divide the proceeds amongst themselves.

45.   To conceal the investment of proceeds into Higher Ground Labs and its portfolio companies including Civitech, Defendants used a shell game.

OSDI Shell Game

- On 12/19/2018, during committee meeting, Dan Ryan/RagTag, HGL proxy, proposes "To reduce confusion, can we remove the master branch?". Doing so would attribute the underlying authorship, which is Plaintiff's to Action Network and others. [D658]

- On 01/17/19, Gerard Niemira/Shadow publishes blog post "Introducing The Shadow Party" which outlines what would become Lightrail, later described as a "universal adapter" [D1311]

- On 2/01/2019 Via telephone, Tim Holohan/Broadstripes, AFL-CIO proxy, tells Plaintiff "you are now in a parting of the ways with people who are important to me, people less willing to talk to you about it" [T20]

- At Netroots Nation 2019, Shadow Lightrail, described as a "universal adapter" is released. Lightrail's infringement wasn't discoverable until summer 2021.

- Also at Netroots Nation 2019, Action Builder, Action Squared's platform is released. [D1759]

- Defendants broke contact in early 2020.

- 07/14/20 Vox News reports "The Democratic Party's most hated startup cant change what happened in Iowa. But it can change its name". Shadow/Lightrail is divested from Acronym and renamed Bluelink. Niemira leaves Bluelink and is replaced by Irene Tollinger. [D1202]

- On 12/02/2020, Action Network announces its Partner Integration Program, treating OSDI as its proprietary API and ecosystem. [D449] This was just over the 4 year statute of limitations for the ambush at Rootscamp 2016 where Swirling announced to a room "A man had entered the room who has engaged in repeated violence and persistent harassment of women...", which was the basis of the claim in Cohen v. Swirling.

- January 2021 According to LinkedIn, Gerard Niemira begins employment at PDI serving as Chief Product Officer. [D1377]

- 02/15/21 On Github, Joe McLaughlin states "Unless and until you make a clean break from the OSDI project and the organization, such as it exists now, and I'm not sure that it does exist, I have little reason to believe that any additional organizations will implement any of the OSDI spec." [D531]

- 08/12/21 Bluelink's infringement becomes discoverable. [D1252]

- 01/12/22 Reported by Axios, Civitech raises $10 million in funding from Higher Ground Labs. [D1961]

- 2/25/2022 The last archived web page of PDI's BlueVote Integrations page shows only 2 integrations, ThruText and Organizer. [D488] Had PDI been able to implement OSDI, it would have competed at the level of the market. It would have had compatibility with the applications listed above.

- June 2022 According to Linkedin, Gerard Niemira leaves PDI and joins Higher Ground Labs as "Managing Director, Fund IV" [D1377]

- 06/17/22 Civitech acquires Bluelink. [D1562]

- On 8/16/2022, on Twitter, Nathan Woodhull announces DaisyChain, describing it as a "platform that integrates the political tech stack"

- On 7/6/2023, having joined Higher Ground Labs, Gerard Niemira announces HGL's "2023 Accelerator Companies", which includes Woodhull's DaisyChain.

I.D   Defendants' Conspiracies Are Open Ended

46.   Defendants' conspiracies are open ended. In order to protect their ill-gotten gains they need to ensure that the external network effect cannot return, that Plaintiff remains excluded from the market.

47.   It wasn't until after Action Network's announcement of its partner integration Program in December 2020 [D1377], and the conversation on Github January - February 2020 [D449], that Plaintiff recognized that Cohen v. Swirling was a false-flag.

48.   It wasn't until after Civitech acquired Bluelink that Plaintiff recognized that the Campaign was serving the interests of Venture Capitalists, which created motive for proxies to join their conspiracies and engage in trade libel against Plaintiff in the form of fraudulent accusations.

49.   Plaintiff fears that Defendants will continue to use their resources to create a coercive level of temptation to induce proxies or use their digital infrastructure to engage in wire fraud to make fraudulent accusations against Plaintiff, or misrepresent his responses to Defendants' abuse and extortion, to prevent him from exercising his federally protected rights.

50.   Since the Github conversation that ended in February 2021, Plaintiff has avoided people associated with Defendants, strangers, sexual activity and socializes only with family and long time friends.

51.

52.   Respectfully Submitted,

53.   /s/ Josh R. Cohen

I I REFERENCES

–T20–   2/1/2019   Phone: "*Osdi 1:1 With Tim*", Tim, Josh, T20 on talker

–T23–   5/30/2018   Audio: "*Telephone Meeting With Jason Rosenbaum*", *My Recording*. J. Rosenbaum, J. Cohen, : youtube.com, T23 on talker Cmte: osdi-youtube.com archive

–D28–   7/21/2017   Email: "Raffi <> Josh", Rapi Castillo, Progressive Coders, Rapi Castillo, Raffi Krikorian, Dnc Cto, Raffi, Josh Cohen, Elizabeth Jaff, Raffi Krikorian, Moriah Graham, et al., D28 on talker, Auth: Gmail ID: CAAVAKc1J5Wzak8UGg9ENm2j-6wgSSjXFHyLEP3JnvXiEK8N1dQ@mail.gmail.com

–D67–   1/25/2018   Email: "Robyn Was Served With The Summons", Justin Mercer, Unknown, D67 on talker

–D312–   9/9/2015   Email: "[Osdi Gov] Van's Osdi Implementation Launched This Week!", Shai Sachs, Seth Bannon, Jason Rosenbaum, Joe Mc Laughlin, Josh Cohen, Osdi Governance, Osdi Dev, Joshco, et al., D312 on talker, Auth: Gmail ID: D215BDCA.4B5CA%ssachs@ngpvan.com Cmte: osdi-dev archive

–D385–   7/13/2017   Email: "Killer Mike's Performing At Netroots!", Eric Thut Via Netroots Nation, Joshco, Unknown, D385 on talker, Auth: Gmail ID: 5967c330372b0_1278058040945784@ip-10-0-0-61.mail

–D390–   10/12/2016   Osdi Pr: "*Progressive Tech Edge Grows With Increased Osdi Adoption*", A. Hampton, J. Rosenbaum, J. Cohen, : opensupporter.org, D390 on talker

–D417–   2/1/2018   Email: "[Osdi Exec] Pdi", Joe Mc Laughlin, Joshco, Josh Cohen, Osdi Exec, Unknown, D417 on talker, Auth: Gmail ID: CALT=vEye93xNx-G1-FbvNOQSAE0rTfo40WVio0=EDEzK35ciAg@mail.gmail.com

–D449–   11/23/2020   Web Page: "Introducing The Integration Partnerships Program!", *Medium*. A. Chin Lai, : medium.com, D449 on talker

–D488–   1/25/2022   Web Page: "Integrations Blue Vote", B. Vote, : archive.org, D488 on talker

–D493–   7/12/2019   Conference Session: "*Nn19 Tech For The Movement, Not The Billionaires*", S. Description, B. Of Moderator, B. Of Panelist, : netrootsnation.org, D493 on talker

–D517–   2/1/2018   Email: "Motion To Approve Sending Dnc Diplomatic Cable", Joshco, Jason Rosenbaum, Seth Bannon, Tim Holahan, Gayatri Bhalla, Beth Becker, Adriel Hampton, Joe Mc Laughlin, et al., D517 on talker, Auth: Gmail ID: 014601d39b70$9451af20$bcf50d60$@gmail.com

–D531–   2/8/2021   Github Issue: "*Action Networks Coercion (Was Response To Put On Api.Opensupporter.Org) * Issue #338 * Opensupporter/Osdi Docs*", *Github*. Highfalutin, Joemcl, Joshco, : github.com, D531 on talker

–D658–   12/19/2018   Open Supporter 12 19 2018 Tech Notes.

–D672–   7/7/2017   Email: "Dmitri", Brady Kriss, Rag Tag, Brady Kriss, Josh Cohen, Unknown, D672 on talker, Auth: Gmail ID: CAEv7e6YRLLfcF7GgEM90k=Bgsn7+_fPUUMsTJZgrVFc-6bctAw@mail.gmail.com

–D1202–   7/14/2020   News: "*The Democratic Partys Most Hated Startup Cant Change What Happened In Iowa. But It Can Change Its Name.*", *Vox*. T. Schleifer, : vox.com, D1202 on talker

–D1252–   8/12/2021   Github Pull Request: "Add Bluelink Connector By Kupad * Pull Request #1 * Bluelink Data/Parsons", *Github*. : github.com, D1252 on talker

–**D1311**–   1/17/2019   Web Page: "Introducing The Shadow Party", *Medium*. G. Niemira, S. Inc.,
 : archive.org, D1311 on talker

–**D1377**–   10/1/2015   Web Page: "Gerard Niemira Linkedin Profile", G. Niemira, : linkedin.com,
D1377 on talker

–**D1562**–   6/17/2022   Web Page: "Bluelink Website (With Civitech Badge)", : archive.org,
D1562 on talker

–**D1637**–   8/2/2017   News: "*Announcing Higher Ground Labs $1.5 M Initial Investment In Our
Inaugural Cohort Higher Ground Labs*", *Higher Ground Labs*. : highergroundlabs.com, D1637 on talker

–**D1759**–   7/11/2019   Conference Session: "*This Is How We Win: A First Look At Action Builder
Netroots Nation*", : netrootsnation.org, D1759 on talker

–**D1961**–   1/12/2022   News: "*Progressive Data Startup Civitech Raises $10 M*", S. Fischer, Axios, :
axios.com, D1961 on talker

–**D1991**–   12/11/2013   Email: "Activity", Nathan Woodhull, Josh Cohen, Unknown, D1991 on
talker, Auth: Gmail ID:
CAC7ioS9VaLqKEN63OUV2knpGUQZyJ2dVznSfNsx_gaVdVH7vZw@mail.gmail.com